

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GREGORY EVANS)	
Claimant)	
VS.)	
)	
PACESETTER PRODUCTS)	Docket No. 195,252
Respondent)	
AND)	
)	
HARTFORD ACCIDENT AND INDEMNITY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the Award dated August 30, 1995, entered by Administrative Law Judge John D. Clark. The Appeals Board heard oral argument on February 6, 1996.

APPEARANCES

Joseph Seiwert of Wichita, Kansas, appeared for the claimant. Michael J. Haight of Overland Park, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

Issues

The Administrative Law Judge awarded claimant permanent partial disability benefits for an 80 percent vision loss in the left eye. Respondent and its insurance carrier requested the Appeals Board to review the issue of nature and extent of disability. Nature and extent of disability and claimant's entitlement to future medical treatment are the only issues before the Appeals Board on this review.

Findings of Fact and Conclusions of Law

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be modified.

(1) The parties stipulated that claimant sustained personal injury by accident arising out of and in the course of employment with the respondent on February 21, 1994, when a nail struck him in the left eye.

Based upon the testimony of Michael Varenhorst, M.D., the Administrative Law Judge found that claimant's accident caused permanent injury to the eye. Respondent contends the Administrative Law Judge misinterpreted Dr. Varenhorst's testimony and that on cross-examination the doctor abandoned his opinion that claimant had an 80 percent vision loss to the left eye. Respondent contends claimant did not sustain any vision loss as a result of the February 1994 work-related accident.

After leaving the emergency room on February 21, 1994, claimant sought medical treatment from board-certified ophthalmologist Dr. Michael Varenhorst. On direct examination, Dr. Varenhorst testified that he tested claimant's eyes on February 25, 1994, and at that time the claimant had uncorrected left eye near vision of 20/40, meaning that claimant could see at 20 feet what a normal sighted person could see at 40 feet. However, when he tested claimant 11 months later in January 1995, claimant's uncorrected left eye near vision was 20/400. Considering that loss as well as the distance vision loss, the doctor found that claimant's vision loss to the left eye was 80 percent. This doctor believed the nail went beyond the superficial layer of the cornea to the cornea's middle layer causing scarring and a cataract. He testified that it was more probably true than not that claimant's vision loss was directly related to the February 1994 accident.

The Appeals Board agrees with the respondent's contention that the doctor modified the initial opinions he expressed on direct examination. On cross-examination, Dr. Varenhorst testified that he questions whether the 20/400 near vision test finding was valid. However, the doctor remains convinced there is both some distance and near vision loss although he is not certain how much. Because of the questions about the reliability of the near vision loss, the doctor ultimately testified that claimant's vision loss ranges

somewhere between 13 percent and 80 percent. The 13 percent loss assumes no near vision loss and the 80 percent loss assumes the 20/400 finding is valid.

Respondent presented the testimony of pediatric ophthalmologist Gerhard W. Cibis, M.D. Dr. Cibis examined claimant in April 1995 and found that claimant was modestly farsighted in both eyes, the left slightly more than the right. He also found a cataract in the left eye which he attributes to the February 1994 accident. However, the doctor believes claimant's farsightedness is due to aging rather than as a result of the February 1994 accident. This doctor does not believe claimant's vision was damaged in any manner by the accident.

Based upon a review of the entire record, the Appeals Board agrees with the Administrative Law Judge's finding that claimant has sustained some vision loss as a result of the February 1994 accident. That conclusion is based upon Dr. Varenhorst's testimony which the Appeals Board finds to be somewhat more persuasive than Dr. Cibis'. However, the Appeals Board finds that claimant has proven only a 13 percent vision loss for which he should receive permanent partial disability benefits. As indicated above, Dr. Varenhorst questioned the 20/400 near vision finding which he notes was entirely subjective and out of proportion to the injury sustained. Dr. Varenhorst testified that he could not establish the actual near vision loss without additional testing and the record is silent whether those additional tests were ever completed.

The Appeals Board finds that the evidence establishes a left eye vision loss of 13 percent. Claimant bears the burden of proof regarding the nature and extent of his injuries. To find a vision loss greater than 13 percent under these facts would require speculation.

Because his is a "scheduled" injury, the claimant's right to permanent partial disability benefits is governed by K.S.A. 44-510d which provides that a worker is entitled to receive 120 weeks of compensation for the loss of an eye. Multiplying the 13 percent loss by the 120 weeks yields 15.6 weeks for which claimant is entitled to receive permanent partial disability benefits.

(2) The medical evidence indicates that claimant may need additional treatment directly related to the left eye injury. K.S.A. 44-510 provides that it is respondent's duty to provide the medical treatment necessary to cure and relieve an injured worker from the effects of a work-related injury. Claimant has sustained a permanent eye injury and continues to experience the effects of that injury, including a cataract, which may require future medical treatment. Claimant may request additional medical care and treatment upon proper application to the Director.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated August 30, 1995, entered by Administrative Law Judge John D. Clark should be, and is hereby, modified to award claimant permanent partial disability benefits for a 13 percent vision loss to the left eye.

As of January 31, 1997, claimant is entitled to 15.6 weeks of permanent partial compensation at the rate of \$291.98 per week for a total award of \$4,554.89, which is all due and owing, and ordered immediately paid less amounts previously tendered.

Claimant may request additional medical treatment upon proper application and hearing before the Director.

The Appeals Board hereby adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Michael J. Haight, Overland Park, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director